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CHARLES ELDREDGE GROOLEY
CLERK

Supreme Court of the United States

October Term, 1944.

No. **351** 113

THE ENOCH PRATT FREE LIBRARY OF BALTIMORE CITY, THOMAS S. CULLEN, HENRY STOCKBRIDGE, III, BLANCHARD RANDALL, JR., WILLIAM J. CASEY, ALBERT D. HUTZLER, ROBERT W. WILLIAMS, WILLIAM G. BAKER, JR., JOSEPH L. WHEELER, JAMES A. GARY, JR. AND HENRY DUFFY,

Petitioners,

v.

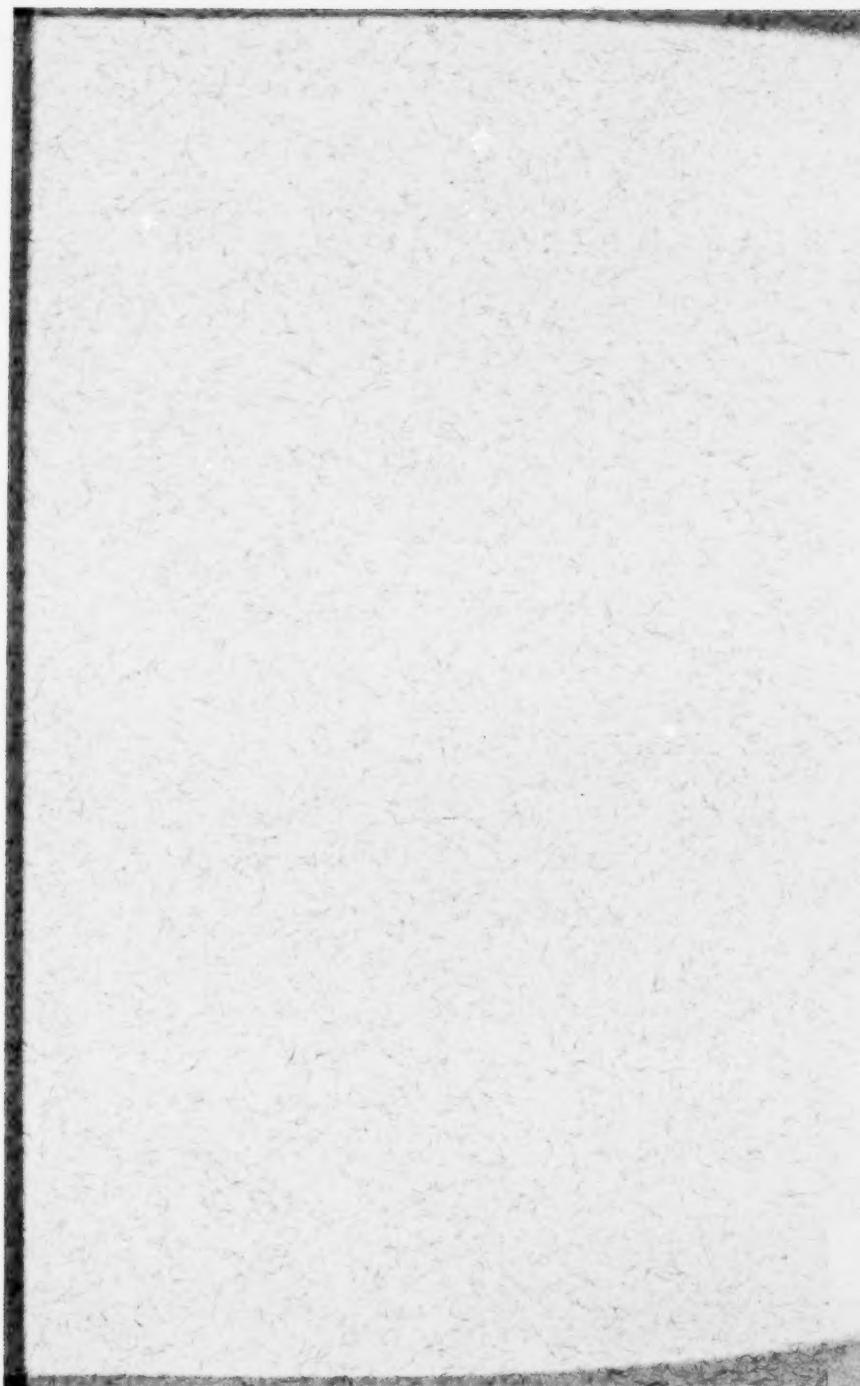
T. HENDERSON KERR AND LOUISE KERR,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

HARRY N. BAETJER,
JOHN HENRY LEWIN,
VENABLE, BAETJER & HOWARD,
Baltimore, Maryland.

Attorneys for Petitioners.



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Petitioners,

v.

T. HENDERSON KERR AND LOUISE KERR,
Respondents.

**PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS
FOR THE FOURTH CIRCUIT.**

The Petitioners, The Enoch Pratt Free Library of Baltimore City, Thomas S. Cullen, Henry Stockbridge, III, Blanchard Randall, Jr., William J. Casey, Albert D. Hutzler, Robert W. Williams, William G. Baker, Jr.,

Joseph L. Wheeler, James A. Gary, Jr. and Henry Duffy, pray that a writ of certiorari issue to review the judgment or decree of the Circuit Court of Appeals for the Fourth Circuit entered on April 17, 1945, reversing a decree of the District Court of the United States for the District of Maryland passed on the 27th day of March, 1944, dismissing as to every count thereof, the Bill of Complaint brought by the Respondents seeking—

- (a) a permanent injunction against the defendants refusing to receive Louise Kerr in the Training Class conducted by The Enoch Pratt Free Library or to consider her application for admission to such Training Class without discrimination because of her race or color;
- (b) a judgment declaring the correlative rights and duties of the parties to the action and establishing Louise Kerr's right to have the defendants receive her application for said Training Class and to consider the same without discrimination because of her race or color;
- (c) damages alleged to have been sustained by Louise Kerr by reason of the refusal to so receive and to consider her application for said Training Class; and
- (d) an injunction restraining the Mayor and City Council of Baltimore from transferring to The Enoch Pratt Library, if a private corporation, any public moneys derived in part out of taxes, levied against T. Henderson Kerr, in excess of \$100,000 per year.

OPINIONS BELOW.

The opinion of the Circuit Court of Appeals for the Fourth Circuit filed April 17, 1945, is not yet reported but is included in the record (Record p. 221); the opinion of the District Court is included in the record (Record p. 24).

BASIS OF JURISDICTION.

Jurisdiction is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, 43 Stat. 938 (28 U. S. C., Sec. 347 (a)); United States Constitution Fourteenth Amendment, Sec. 1; Civil Rights Act, 8 U. S. C., Secs. 41 and 43; the Declaratory Judgments Act, 28 U. S. C., Sec. 400; Maryland Declaration of Rights, Art. 43; Maryland Constitution, Art. 3, Sec. 48.

The order or decree of the Circuit Court of Appeals for the Fourth Circuit was entered April 17, 1945 and upon application, said Court on May 8, 1945, ordered that the mandate be stayed for thirty days pending the application for writ of certiorari in this Court.

QUESTIONS PRESENTED.

Whether the Court below was justified in finding that—

(a) the Enoch Pratt Free Library was a state agency and that its action in refusing to admit the plaintiff, Louise Kerr, a negress, to its Training Class, was state action;

(b) in so doing it deprived her of the equal protection of the laws in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States and the Civil Rights Act; and

(c) the applicant, Louise Kerr, a negress, was excluded from the Training Class because of her race and color.

STATUTES AND LEGISLATION INVOLVED.

1. *Federal:* United States Constitution, Amendment XIV, Section 1; the Civil Rights Act, 8 U. S. Code, Secs. 41 and 43; the Declaratory Judgments Act, 28 U. S. Code, Sec. 400.

2. *Maryland*: Declaration of Rights, Art. 43; and Constitution, Art. 3, Sec. 48; Acts 1882, c. 181; 1908, c. 144, 1927, c. 328; 1939, c. 16.

3. *Baltimore City*: Ordinance 106, July 18, 1882; Ord. 64, May 14, 1883; Ord. 145, Oct. 10, 1884; Ord. 275, May 11, 1907; Ord. 249, April 23, 1920; Ord. 1053, April 13, 1927; Ord. 559, Dec. 7, 1928; Ord. 1195, Dec. 16, 1930; Ord. 961, May 29, 1939; and Baltimore City Charter, Secs. 6-14a.

SUMMARY STATEMENT.

The Trustees of The Enoch Pratt Free Library, under the corporate name The Enoch Pratt Free Library of Baltimore City were incorporated by a special act of the General Assembly of Maryland at the behest of the founder and donor of the original library, Enoch Pratt. Title to its property is in the Mayor and City Council of Baltimore and it is largely but not entirely financed by grants of money appropriated in its aid, by the City of Baltimore. The original library—building and books which cost approximately \$225,000—together with cash in the amount of \$833,333.33 was given to the City by Enoch Pratt. The Board of Trustees is self-perpetuating. The original trustees were designated by the donor and named in the act of incorporation [Chapter 181 of the Acts of 1882]. By the statutory charter, they are empowered—

“* * * to do all necessary things for the control and management of said Library * * *, and to make all necessary by-laws and regulations * * * for the appointment of the necessary officers and agents.”

They declined to admit the plaintiff Louise Kerr, a Negress, who possessed the necessary educational qualifications, to an intra-mural training course conducted by it for the Library for the purpose of preparing suitable candidates for the appointment to professional positions with the Library, as library assistants.

In the complaint, it is alleged that she was refused admission to the Training Class because of her race or color and that the action of the Trustees in refusing to receive and to consider her application was "state" action within the contemplation of the Fourteenth Amendment to the Constitution of the United States. The Trial Court held that she was not excluded solely because of her race and color and that the Library is a private corporation and does not perform any public function as a representative of the State. The Circuit Court of Appeals reversed the Lower Court on both questions.

REASONS FOR GRANTING THIS PETITION.

The Circuit Court of Appeals for the Fourth Circuit has decided important questions of federal law which have not been but should be, settled by this Court.

In 1881, Enoch Pratt, a philanthropist, offered to the City of Baltimore to establish the Library and agreed to erect and equip a building and to supply the requisite books to that end, to cost \$225,000, more or less, and to convey the building, equipment and books to the City and to pay to it \$833,333.33 in cash provided the City accept the conveyance and the money and agree to create an annuity and pay annually to a Board of nine trustees to be named by Mr. Pratt and their successors, the sum of \$50,000 for the establishment and maintenance of the Library and branches; the offer was accepted and the Legislature in 1882 granted the legislative charter which named the Trustees of the Library and provided that they and their successors were constituted a body politic under the name The Enoch Pratt Free Library of Baltimore City with power to fill vacancies, to perpetuate their succession and to do everything necessary for the control and management of the Library

including the right to make necessary regulations for its government "and for the appointment of the necessary officers and agents". In 1883, the Library was completed and title to it transferred to the City.

Subsequently, in 1907 the resources of the Library were augmented by a gift of \$500,000 from Andrew Carnegie, to provide for the erection of branch buildings, the City at the same time agreeing to provide funds for the maintenance of these branches in the annual amount of \$50,000. In 1927 with the proceeds of a bond issue of about \$3,000,000, the City erected a greatly enlarged and improved library incorporating the original plant, and since 1932 the City has made large annual appropriations for the support of the Library. The City has no legal authority to supervise or in any way control the management of the Library with respect to the appointment of staff positions or the amount of annual expenditures except that it could reduce in part the amount of its annual appropriation. All of the activities and functions of the Library Trustees are imposed pursuant to the terms of the trust specified by the original grantor, Mr. Pratt. The City accepted the property and has made its appropriations pursuant to the terms of the original contract.

The Trustees in passing upon the application of Louise Kerr held by a formal resolution—

"• • • that is unnecessary and unpracticable to admit colored persons to the Training Class of the Enoch Pratt Free Library. The Trustees being advised that there are colored persons now available with adequate training for library employment have given the Librarian authority to employ such personnel where vacancies occur in a branch or branches with an established record of preponderant colored use."

This action was taken on September 17, 1943. Prior thereto, the Trustees in the exercise of their discretion,

had made appointments of two negroes to positions at a branch the patronage of which was predominately colored.

The Circuit Court of Appeals has decided erroneously, we submit—

(A) That although The Enoch Pratt Free Library was incorporated and the original library building and books were conveyed and given to the City of Baltimore pursuant to a contract between it and the donor and although pursuant to said contract confirmed by the statutory charter, there was vested in a self-prepetuating board of trustees originally designated by the donor, the absolute right to choose the employees of the Library and although the original grant was of a building and books costing approximately \$225,000 together with \$833,333.33 in money, the action of the Trustees shall nevertheless be deemed to be state action because title to the property of the Library is vested in the City of Baltimore and its expenditures are made largely through grants in aid made by the municipality.

The holding offers no criterion by which to judge the extent of ownership or of state aid which will support such a finding.

The Court has decided again erroneously, we think—

(B) That a determination by the Trustees and action pursuant thereto, that tasks to be performed can be better done by a white person than by a colored person constituted discrimination against the colored person by reason of her race, although in the best judgment of the Trustees, by reason of the nature of the work to be done and the persons to be served, the work could be best done by a white person.

The decisions do not support the holding that grants in aid to an institution even though its property is owned by the State, certainly not in instances in which a large part of the property of the institution was acquired by virtue

of a gift by the terms of which the control over its management was fixed in its Trustees, constitute the grantee a state institution and the action of its governing board, state action; neither do the decisions support a finding that superior availability for a service to be performed will not justify the appointment of a white person in preference to a negro, without violation of constitutional restraints.

Both questions are important especially in view of the fact that in substantially all communities, schools, hospitals, homes for the aged, orphan asylums and like eleemosynary institutions many of which are conducted by religious and racial organizations, are the recipients of state aid and could not exist regardless of the ownership of their properties, without such assistance.

And finally, the Circuit Court of Appeals, it is submitted, was in error in its apparent holding that the action of the Trustees was violative of the state statute incorporating them (*St. Mary's School v. Brown*, 45 Md. 310; *University of Maryland v. Williams*, 9 G. & J. 365, 397; *Clark v. Maryland Institute*, 87 Md. 653).

WHEREFORE, it is respectfully submitted that this petition for writ of certiorari to review the decision of the Circuit Court of Appeals for the Fourth Circuit should be granted.

HARRY N. BAETJER,

JOHN HENRY LEWIN,

VENABLE, BAETJER & HOWARD,

Baltimore, Maryland.

Attorneys for Petitioners.

